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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 75

COLORADO INTERSTATE GAS COMPANY,
a Corporation,
Appellant,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, AND PANHANDLE EASTERN PIPE LINE COMPANY,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

MOTION TO DISMISS

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Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

MOTION TO DISMISS

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, Panhandle Eastern Pipe Line Company, appellee, moves to dismiss this appeal from the judgments of the Supreme Court of the State of Kansas on the grounds that such judgments rest on adequate nonfederal bases, that the alleged federal question was not properly raised and that no substantial federal question is presented.

OPINIONS BELOW

The opinions of the Supreme Court of the State of Kansas are reported at 192 Kan. 2, 386 P.2d 266 (Jurisdictional Statement A1), and 192 Kan. 29, 386 P.2d 288 (Jurisdictional Statement A43).

JURISDICTION

Appellant attempts to invoke the jurisdiction of the Supreme Court of the United States under 28 U.S.C., § 1257 (2)

QUESTIONS PRESENTED

Whether the judgments of the Supreme Court of the State of Kansas rest on adequate nonfederal bases, whether any federal question was properly raised and whether the State Corporation Commission of the State of Kansas or private pipe line companies shall fix the amount of natural gas to be produced from the Kansas Hugoton gas field.

STATEMENT

This case concerns orders entered by the State Corporation Commission of the State of Kansas.[1] In 1956, the Kansas Commission began hearings to reconsider the method by which it calculated the amount of natural

1. Cases related to this proceeding and on appeal to this Court are No. 83, *Northern Natural Gas Company et al.* v. *State Corporation Commission of the State of Kansas et al.*, and No. 140, *Kansas-Nebraska Natural Gas Company, Inc.*, v. *The State Corporation Commission of the State of Kansas et al.*

gas to be produced from wells located in that part of the Hugoton gas field situated in the State of Kansas. Prior to that time, the Kansas Commission had, after hearings and in the manner described below, fixed the amount of gas to be produced from the Kansas Hugoton field on the basis of monthly estimates submitted by the pipe line companies purchasing gas from that field. Each month the Kansas Commission accepted without question the pipe line companies' estimates, adding to the total estimates the amount of gas, if any, taken in the prior month in excess of the amount fixed by the Commission for that month and subtracting the amount, if any, which under the Commission's order for the prior month any company or companies could have taken but failed to take. Thus, the amounts of gas actually taken by the companies controlled the Kansas Commission's determinations (Jurisdictional Statement A10-A12, A32-A33). The Kansas Supreme Court held that the practice of subtracting amounts of gas not taken was unauthorized under both the applicable Kansas Statute and the Kansas Commission's own orders (*id.* at A30-A34).

Beginning in May, 1956, the Kansas Commission employed several variations in its procedure, finally adopting a method based largely upon the total of the pipe line companies' estimates. The most significant change in the Kansas Commission's procedure was that the amount of gas not taken under the prior month's determination was no longer subtracted from the amount determined by the Commission to be necessary to satisfy the market demand for gas for the current month (*id.* at A12-A13). This has made available to the pipe line companies additional quantities of gas, and the appellant contends that this is unlawful.

Three types of orders issued by the Kansas Commission are involved in this appeal: (1) monthly orders for each month from May, 1956, through January, 1959, and from October, 1959, through March, 1960, fixing the amount of gas available to be produced in each of those months; (2) semiannual orders determining the market demand for gas from the Kansas Hugoton field for six months' periods (October through March and April through September); and (3) a general order effective February 1, 1958, specifying the method by which the Kansas Commission proposed to determine the amount of gas to be produced by each well in the field. Ultimately, these orders were reviewed by the Supreme Court of the State of Kansas in seven separate cases and disposed of in two opinions.

1. **Proceedings Arising in the District Court of Finney County, Kansas.**

Appellant petitioned the District Court of Finney County, Kansas, for judicial review of the Kansas Commission's orders. In each instance this appellee, Panhandle Eastern Pipe Line Company ("Panhandle"), and the appellee Southwest Kansas Royalty Owners Association ("Royalty Owners") intervened.

(a) Kansas Supreme Court Cases 41,515 and 41,555. The Finney County District Court entered judgment reversing and setting aside the Kansas Commission's orders covering the period from May, 1956, through September, 1958, insofar as they permitted production of gas in excess of that which would have been permitted under the Commission's previous practice (Jurisdictional Statement A58-A61; A64-A67). Appeals were taken from such judgment by Panhandle, the Kansas Commission and the Royalty Owners, all being docketed by the Kansas Supreme Court as Case 41,515.

Subsequently, the Finney County District Court entered judgment reversing and setting aside to the same extent the Kansas Commission's monthly orders covering the period from October, 1958, through January, 1959, and the semiannual order estimating market demand for the period from October, 1958, through March, 1959 (Jurisdictional Statement A70-A74). Appeals also were taken from such judgment by Panhandle, the Commission and the Royalty Owners, all being docketed by the Kansas Supreme Court as Case 41,555.

Cases 41,516 and 41,556, to which appellant is not a party, involve proceedings initiated by Northern Natural Gas Company for judicial review of the same orders. Northern Natural has also taken an appeal to this Court. See No. 83, October Term, 1964.

Cases 41,515 and 41,555, together with Cases 41,516 and 41,556, were disposed of by the Kansas Supreme Court in a single opinion appearing at 192 Kan. 2, 386 P.2d 266 (Jurisdictional Statement A1). Included among the reasons given for reversing the judgments of the Finney County District Court are the following nonfederal grounds:

First, no timely applications for rehearing were filed with the Kansas Commission respecting the orders issued prior to November, 1957 (*id.* at A14-A17). Under the procedure prescribed by Section 55-606 of the Kansas General Statutes (G.S. 1949, 55-606), a timely petition for rehearing filed with the Commission is prerequisite to judicial review.

Second, the Kansas Commission's general order (effective February 1, 1958), describing the procedure which the Commission proposed to follow in the calculation of the amount of gas which may be produced by wells in the

Kansas Hugoton field, was construed by the Kansas Supreme Court to have only prospective application. Judicial review is unavailable until the Commission implements the general order (Jurisdictional Statement A18-A19).

Third, when the Finney County District Court set aside the Kansas Commission's monthly orders from May, 1956, through January, 1959, it exceeded its statutory authority and erroneously substituted its determinations for those of the Commission (*id.* at A19-A22). The trial court's erroneous judgments appear in Appendix C to the Jurisdictional Statement as follows:

Orders Covering the Period	Jurisdictional Statement
May, 1956, through August, 1958	A58-A61
May, 1956, through November, 1957	A61-A63
September, 1958	A64-A67
October, 1958, through January, 1959	A67-A69

The trial court's error on this point had a more widespread effect, in terms of the number of orders involved, than any of the trial court's other reversible errors.

Fourth, the Finney County District Court disregarded its statutory duty to make findings of fact and conclusions of law when requested to do so by Panhandle (Jurisdictional Statement A23-A24).

Fifth, as discussed in detail in its opinion reported in 192 Kan. 29, 386 P.2d 288 (Jurisdictional Statement A43),

the Kansas Supreme Court held that the Finney County District Court lacked jurisdiction to review the semiannual market demand order for October, 1958, through March, 1959, and monthly orders for October, 1958, through January, 1959, because petitions for judicial review of the same orders had been filed earlier in the District Court of Stevens County, Kansas (Appendix A). Proceedings in the Stevens County District Court to review these orders have been continued pending disposition of the instant appeal (Appendix B).

(b) Kansas Supreme Court Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated). The Finney County District Court entered judgment affirming the Kansas Commission's semiannual market demand order for October, 1959, through March, 1960, and affirming in part and reversing in part the orders for each month during that period (Jurisdictional Statement A76-A80). Appeals were taken from such judgment and consolidated with other similar appeals, all such appeals being docketed by the Kansas Supreme Court as Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated). These cases were disposed of by the Kansas Supreme Court in the opinion appearing at 192 Kan. 29, 386 P.2d 288 (Jurisdictional Statement A43), on the nonfederal ground that exclusive jurisdiction to review the Commission's October, 1959, through March, 1960, orders was vested in the Stevens County District Court, petitions for judicial review having been filed there earlier than in the Finney County District Court.

2. **Proceedings Arising in the District Court of Stevens County, Kansas.**

The Royalty Owners and Panhandle petitioned the Stevens County District Court for judicial review of the Kansas Commission's orders described in the preceding

paragraph (b). That court affirmed such orders, and from its judgment an appeal was taken to the Kansas Supreme Court, being docketed there as Case 42,038. The appellant was not a party to the proceedings in the Stevens County District Court, and it was not a party to either the appeal, or the attempted appeal, therefrom to the Kansas Supreme Court.

In summary, in proceedings before the Kansas Supreme Court, review of which is sought here, the appellant was a party to Cases 41,515 and 41,555, and Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated) and to no other cases. In each of the cases to which the appellant was a party, the judgment of the Kansas Supreme Court is based upon a nonfederal ground adequate in itself to sustain the disposition made by that court.

ARGUMENT

The Judgments of the Kansas Supreme Court Rest upon Adequate Nonfederal Grounds, and No Federal Question Was Properly Raised

This Court has repeatedly held that it lacks jurisdiction to review a state court's decision based upon an independent state ground sufficient to support its judgment. A case such as this, as this Court has previously stated, "is controlled by the settled rule that where the judgment of a state court rests upon two grounds, one of which is federal and the other nonfederal in character, our jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp.* v. *Muller*, 296 U.S. 207, 210 (1935). Decisions acknowledging this rule, in addition to those cited in the *Muller* case, include:

Cramp v. *Board of Public Instruction of Orange County, Florida*, 368 U.S. 278, 281 (1961).

Black v. *Cutter Laboratories*, 351 U.S. 292 (1956).

Stembridge v. *State of Georgia*, 343 U.S. 541 (1952).

Radio Station WOW, Inc., v. *Johnson*, 326 U.S. 120, 129 (1945).

Holley v. *Lawrence*, 317 U.S. 518 (1943).

Moreover, this Court declines to assume jurisdiction over an appeal from the judgment of a state court where it does not appear upon which of two grounds, one federal and one nonfederal, the judgment rests. *Lynch* v. *People of New York, ex rel. Pierson*, 293 U.S. 52 (1934).

Appellant seeks review by this Court of a judgment entered by the Kansas Supreme Court in four cases (Cases 41,515, 41,516, 41,555 and 41,556). It was a party to only two of such cases (Cases 41,515 and 41,555) each of which was decided by the Kansas Supreme Court on manifestly nonfederal grounds:

Kansas Supreme Court Case 41,515

1. Failure to file timely petitions for rehearing with the Kansas Commission as required by state law.

2. The Kansas Commission's general order operates prospectively and is not subject to judicial review by Kansas courts until implemented by the Commission.

3. The trial court (District Court of Finney County, Kansas) substituted its judgment for that of the Kansas Commission, contrary to the statutory authority granted to such court.

4. The trial court failed to discharge its statutory duty to make findings of fact and conclusions of law when requested to do so by a party.

Kansas Supreme Court Case 41,555

1. The trial court (District Court of Finney County, Kansas) lacked jurisdiction to review the Kansas Commission's orders covered by Case 41,555 because petitions for judicial review of such orders were filed first in the District Court of Stevens County, Kansas.

2. The trial court substituted its judgment for that of the Kansas Commission, contrary to the statutory authority granted to such court.

3. The trial court failed to discharge its statutory duty to make findings of fact and conclusions of law when requested to do so by a party.

Under the law of the State of Kansas, the orders of the Commission are presumed to be valid.[2] They remain in force until set aside by a district court in the manner provided by statute. As indicated by the Kansas Supreme Court in the present case, a Kansas district court has no authority to review the Kansas Commission's orders except to the extent permitted by statute (Jurisdictional Statement A22). The Finney County District Court not only exceeded its statutory authority, erroneously substituting its judgment for that of the Commission, it also failed to discharge its statutorily imposed duty to make findings of fact and conclusions of law. Therefore, because the Finney County District Court departed from the procedures for judicial review established by Kansas statutes, its judgment was reversed. As a consequence, the Kansas Commission's orders remain in effect. Precisely the same errors committed by the Finney County District Court in the present case were committed by the trial court in *Cities of McPherson* v. *State Corporation Commission*, 174 Kan.

2. *Bennett* v. *State Corporation Commission*, 157 Kan. 589, 142 P.2d 810, 815 (1943).

407, 257 P.2d 123 (1953). The Kansas Supreme Court, noting the similarity of the statutory judicial review provisions involved in both cases (Jurisdictional Statement A22), terminated the litigation in each of them by reversal of the trial courts' judgments.

In addition, appellant requests this Court to review a judgment entered by the Kansas Supreme Court in five cases (Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated) and 42,038). Appellant was not a party to Kansas Supreme Court Case 42,038 and, accordingly, can raise no issue in this Court respecting that proceeding. Appellant was a party to Kansas Supreme Court Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated), but those proceedings were decided by the Kansas Supreme Court on the unmistakably nonfederal ground that the trial court (District Court of Finney County, Kansas) lacked jurisdiction to review the Kansas Commission's orders covered by such Consolidated Cases because petitions for judicial review of such orders were filed first in the District Court of Stevens County, Kansas.

SUMMARY

Kansas Supreme Court Case		Reason for Dismissal of These Appeals
41,515		Trial court's judgment reversed on nonfederal grounds.
41,516		Appellant not a party.
41,555		Trial court's judgment reversed on nonfederal grounds.
41,556		Appellant not a party.
42,175	Consolidated	Trial court's judgment re-
42,176		

42,185)	versed on nonfederal
42,230)	grounds.
42,038	Appellant not a party.

The State Corporation Commission of the State of Kansas, Not Private Pipe Line Companies, Should Determine the Amount of Natural Gas Which May Be Produced from the Kansas Hugoton Gas Field

The merits of this appeal present only the nonfederal question of whether a majority of the pipe line companies or the Kansas Commission may control the amount of gas which lawfully may be produced from the Kansas Hugoton gas field. Procedural deficiencies previously discussed are dispositive of this appeal. Nevertheless, to dispel any impression that the appellant may be deprived of the opportunity to assert a meritorious case only because of procedural deficiencies, we desire to focus attention upon the issue on the merits and rescue it from the distortion to which it has been subjected by the appellant in its attempt to convert a purely local question into a federal-state conflict.

The litigation in its entirety involves the validity of producing allowables, *i.e.*, the amount of gas which individual wells are permitted to produce in a given period of time. It would be difficult to conceive of something more squarely within the function of production, which, under the "production and gathering" exclusion of the Natural Gas Act, is reserved for regulation by the states (15 U.S.C., §717(b), Jurisdictional Statement 8).

Apart from this rather obvious disposition of appellant's basic contention that the jurisdiction of the Federal Power Commission has been invaded, we call attention to the fact that the true issue raised by appellant is not whether the Kansas Commission or the Federal Power

Commission is the agency empowered to set gas well allowables, but whether the Kansas Commission or the pipe line companies should have actual control of the allowables.

There were three sides to this litigation in the state court. The appellant attacked the Kansas Commission's orders, contending that the Commission was required to deduct underages from, and add overages to, the amount required to satisfy market demand.[3] This has been characterized as the historic method of computing allowables. If this was done the market demand determination had no ultimate effect on allowables because past runs controlled current allowables. Panhandle and the Royalty Owners attacked the orders on the grounds that the actual market demand, as shown by the evidence, vastly exceeded the nominations (estimates of amounts of gas to be purchased) filed by the pipe line companies and that the Commission had no right to let a majority in interest of the pipe line companies determine allowables, either by actual purchases (as was the case if underages were subtracted and overages added each month) or by nominations. The Commission defended its orders but objected to having to defend the same order in more than one court.

The Commission sometimes accepted the nominations as the market demand and sometimes increased them in inconsequential amounts, but no longer deducted underages or added overages for the previous month. The District Court of Finney County in the early cases (Nos.

3. Underages are amounts of gas which could have been produced under prior orders of the Commission, but were not taken by the pipe line companies. Overages are amounts of gas which the pipe line companies have taken in excess of quantities authorized by prior orders of the Commission.

41,515, 41,516, 41,555 and 41,556) rendered a judgment setting aside the allowables in so far as they exceeded what they would have been if the Commission had followed the historic method.

The second group of cases (Nos. 42,175, 42,176, 42,185 and 42,230 (Consolidated) and 42,038) involved the same issues but arose under an amended Kansas statute. In these cases the Stevens County District Court found that the Commission was not authorized or required to follow the historic method, and the Finney County District Court, in effect, changed its mind and reached the same conclusion. Both courts rejected Panhandle's and the Royalty Owners' contentions that the evidence required a market demand determination substantially in excess of the nominations.

Apart from its conclusions on the procedural questions previously discussed, the Kansas Supreme Court held: (1) The Commission was neither authorized nor required to follow the historic method of deducting underages; (2) Market demand is a question of fact to be determined by the Commission from all of the available evidence, and, although the Commission's market demand determination barely exceeded the total of the nominations, Panhandle and the Royalty Owners had failed to establish that the determination was arbitrary or unreasonable. This second holding is not before this Court because Panhandle and the Royalty Owners have not appealed. Panhandle's decision in this respect is the product of a practical realization that it is more important that the litigation be terminated than that the allowables for seven years be recalculated on the basis of the full market demand. The first holding is all that is left in the case. Certainly, the question of whether the Kansas

Statute directs or permits the Kansas Commission to deduct underages is a question of Kansas law.

In a companion case (No. 140), the appellant, Kansas-Nebraska Natural Gas Compny, Inc., has been candid enough to acknowledge that "At this point in time, the power of the State of Kansas to regulate by limiting the production of natural gas from common sources of supply within the state in order to prevent waste of a valuable resource and to protect the correlative rights of owners of interests in such production is no longer questioned. (*Bandini Petroleum Co.* v. *California Superior Ct.*, (1931) 284 U.S. 8, 76 L. Ed. 136, 52 S. Ct. 103)." (No. 140, Jurisdictional Statement 26).

In none of the related appeals (Nos. 75, 83 and 140) do the appellants complain of the setting of allowables by the Kansas Commission—providing that the Commission establishes allowables according to the so-called historic method. In fact, this is the totality of the complaint, that the Commission departed from the historic method. Reduced to fundamentals, this method was a procedure whereby the Kansas Commission was limited to performing the mechanical function of a calculating machine, using data furnished by the pipe line companies. Thus the pipe line companies—not the Kansas Commission—controlled allowables by (1) their estimates and (2) the quantities of gas actually taken.

Although in some cases the market demand determined by the Commission after it abandoned the historic method was in excess of the estimates, this was not burdensome to the appellant. Allowables do not compel the taking of any gas, rather they are permissive and authorize equitable production from each well in a common source of supply.

Appellant complains that in some instances its gas purchase contracts have "take-or-pay" clauses which require that it take the full allowable or pay for it. Surely the type of contract appellant elects to enter into cannot convert a matter of purely local concern into a matter of federal concern. Any adverse effect of take-or-pay clauses could come about as easily through operation of the historic method (if other companies estimated substantially higher than appellant) or through allowables which might have been established by the Federal Power Commission if that were its function.

The fact is that the appellant has not been hurt by the allowables approved by the Kansas Supreme Court. All underages cancelled during times pertinent to this appeal have been or, upon application by the party concerned, will be reinstated under the procedure established by the Commission.[4] Accordingly, the Kansas Commission's orders have had no adverse effect upon the appellant. Additionally, the State Commission has ordered a moratorium upon cancellation of further underages.[5]

Moreover, as expressly observed by the Kansas Supreme Court (Jurisdictional Statement A33), the Kansas Commission's prior practice of adding cancelled underages to the market demand for gas was not questioned in the Kansas courts. Until added to the market demand, gas constituting the cancelled underage simply remains in the ground. Under the existing practice, no one is deprived of anything. It follows that review of the Kansas Commission's orders by this Court would be inappropriate

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4. No. 83, *Northern Natural Gas Company et al. v. State Corporation Commission of the State of Kansas*, Jurisdictional Statement 29, n. 33.

5. *Ibid.*

until the only practice which could conceivably produce injury has been put into effect and has been properly challenged in the Kansas courts.

Appellant attempts to make this case fit the mold of *Northern Natural Gas Co.* v. *State Corporation Commission of Kansas*, 372 U.S. 84 (1963). Obviously it will not conform, for this Court based that decision squarely on the fact that the order was directed to the pipe line purchaser, saying:

> "The danger of interference with the federal regulatory scheme arises because these orders are *unmistakably and unambiguously directed at purchasers* who take gas in Kansas for resale after transportation in interstate commerce. In effect, these orders shift to the shoulders of interstate purchasers the burden of performing the complex task of balancing the output of thousands of natural gas wells within the State, cf. *Miller Bros. Co.* v. *Maryland*, 347 U.S. 340—*a task which would otherwise presumably be the State Commission's.* * * *" (372 U.S. at 92; emphasis supplied.)

Here the Kansas Commission has undertaken that task and has directed its orders to producers, not purchasers for resale after transportation in interstate commerce. Of course, these orders may have some residual effect on interstate pipe line companies, as would any other conservation order or safety regulation directed to the producer. This, however, does not destroy the essentially local character of these conservation acts of the Kansas Commission.

The statute of which appellant complains says no more than that the Commission in determining consumptive demand may consider relevant evidence either within or without the state. Though the appellant has tortured

the issue in an attempt to make it fit the form of a federal question, the case stripped bare is nothing more than a question of whether a majority of the pipe line companies may control allowables to suit their private purposes or whether the Kansas Commission may set allowables based upon reasonable evidence. Surely this issue, premised upon appellant's contention that a state court cannot hear evidence of facts which exist outside of its territorial jurisdiction, presents no substantial question, federal or otherwise.

CONCLUSION

Panhandle Eastern Pipe Line Company, appellee, submits that this appeal should be dismissed because the judgments of the Kansas Supreme Court rest on adequate nonfederal grounds, because no federal question was properly raised and because no substantial federal question is presented.

Respectfully submitted,

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August, 1964

APPENDIX A

COLORADO INTERSTATE GAS COMPANY

v.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, et al.

The following summaries appear in Panhandle Eastern Pipe Line Company's Abstract of the Record in Kansas Supreme Court Cases Nos. 41,555 and 41,556, which Abstract is part of the record in this appeal. References are to pages in such Abstract. The Kansas Commission's order referred to in the first two summaries appears in such Abstract at pages 83-87, and the Kansas Commission's order referred to in the last two summaries appears in such Abstract at pages 100-101.

Petition for Judicial Review—Southwest Kansas Royalty Owners Association

On December 31, 1958, after Petitions by all parties for rehearing had been denied, the Southwest Kansas Royalty Owners Association filed its Petition for a Judicial Review of the Commission's Order determining the six months market demand for gas produced from the Kansas Hugoton Field, which Order has been heretofore set forth.

The Royalty Owners Association filed its Petition for Judicial Review in the District Court of Stevens County, Kansas. It was assigned Case No. 4044. [Page 102]

Petition for Judicial Review—Colorado Interstate Gas Company

On January 7th, 1959, Colorado Interstate Gas Company filed its Petition for a Judicial Review of the Commission's Order determining the six months market demand for gas produced from the Kansas Hugoton Field, in the District Court of Finney County, Kansas. It was assigned Case No. 10,582. [Pages 116-117]

Petition for Judicial Review—Southwest Kansas Royalty Owners Association

On December 31, 1958, after Petitions for Rehearings by all parties had been denied, the Southwest Kansas Royalty Owners Association filed its Petition for a Judicial Review of the Commission's Order determining the October, 1958, Allowables for the Kansas Hugoton Field.

The Royalty Owners Association filed its Petition for Judicial Review in the District Court of Stevens County, Kansas. It was assigned Case No. 4045. [Page 102]

Petition for Judicial Review—Colorado Interstate Gas Company

On January 7th, 1959, Colorado Interstate Gas Company filed its Petition for a Judicial Review of the Commission's Order determining the October, 1958, allowables for gas produced from the Kansas Hugoton Field, in the District Court of Finney County, Kansas. It was assigned Case No. 10,581. [Page 104]

APPENDIX B

IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, and PANHANDLE EASTERN PIPE LINE COMPANY, Petitioners, vs. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Respondent, NORTHERN NATURAL GAS COMPANY, Intervenor.	Cases Numbered: 4044, 4045, 4046, 4047, 4048, and 4049.

Mr. Dale M. Stucky
901 First National Bank Bldg.
Wichita 2, Kansas

Mr. A. E. Kramer
Hugoton, Kansas

Mr. C. C. Linley
Liberal, Kansas

Mr. Chas. Vance
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Mr. Clyde E. Milligan
Kansas Corporation Commission
Topeka, Kansas

Mr. Mark H. Adams
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Wichita, Kansas

Order of Continuance

The above cases are before this court on:

1. Motion by Intervenor to dismiss for lack of jurisdiction; and
2. Judicial Review of Orders made by The State Corporation Commission of the State of Kansas.

Since the District Court of Finney County, Kansas has taken jurisdiction of the identical matters at issue in the above cases, as well as former companion matters, I can see no good that could result from any judgment by this court until a final disposition has been made of the identical matters in the District Court of Finney County, Kansas.

If this court makes the same findings and renders the same judgment, as those made and to be made by the District Court of Finney County, Kansas, then nothing beneficial is accomplished.

Findings and judgments by this court different or contrary to those made by the District Court of Finney County, Kansas would result in two appeals to the Supreme Court on the same points.

Such results would not be beneficial to the litigating parties and would be harmful to the prestige and dignity of the judiciary of Kansas.

Therefore, this court, on its own motion, continues the above cases for decision until disposition has been made of the identical matters in the District Court of Finney County, Kansas or until something further arises that is not at this time foreseen by this court.

/s/ L. L. Morgan

Judge L. L. Morgan
District Judge